

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
DOCKET NO. 1:15-cr-00024-MOC-DLH

UNITED STATES OF AMERICA,)
)
)
)
)
Vs.)
)
KENDRICK JEREL LATTIMORE,)
)
)
Defendant.)

THIS MATTER is before the Court after the October 23, 2017 evidentiary hearing, which focused on the validity of the Notice of Stipulation (#21) by defendant immediately before the bench trial. Specifically, the Court of Appeals for the Fourth Circuit vacated this Court's Judgment (#34) and remanded the matter for determination of whether the stipulation was both knowingly and voluntarily entered. United States v. Lattimore, No. 16-4057 (4th Cir. June 13, 2017) (unpublished).

Upon remand and after having conducted an evidentiary hearing, the Court finds that defendant's Notice of Stipulation was made voluntarily, but not knowingly, inasmuch as defendant was not informed by counsel of the impact of United States v. Wolfe, 442 F. App'x 16, 17 (4th Cir. 2011) (unpublished). The Notice of Stipulation is, therefore, invalid and is stricken.¹

With the Judgment having been vacated on appeal, the government and the defendant have requested a bench trial.² The Court, as the Rule 23 gatekeeper, will grant that request as it appears

¹ The stipulation will be "stricken" insofar as it cannot be used against defendant in any manner; it will, however, remain as docket entry (#21) in order to maintain the integrity of the record.

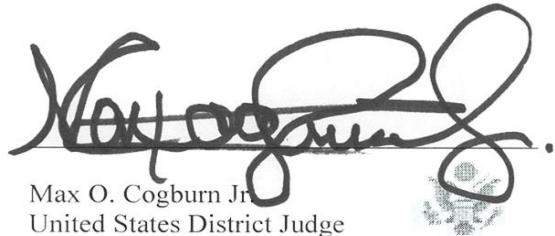
² At the hearing, the Court advised defendant and his counsel that the undersigned would recuse if defendant believed the Notice of Stipulation created any taint. Defendant through counsel declined that offer. The Court will not, therefore, consider the stricken Notice of Stipulation.

that defendant has knowingly and voluntarily waived his right to a jury trial, see Notice of Waiver of Right to Jury Trial (#19), and the Court finds that the proposed bench trial is in the interests of justice. Fed.R.Crim.P. 23(a).

ORDER

IT IS, THEREFORE, ORDERED that the Notice of Stipulation (#21) is **STRICKEN**, and this matter is **CALENDERED** for a bench trial beginning December 4, 2017, in Asheville.

Signed: October 23, 2017

A handwritten signature in black ink, appearing to read "Max O. Cogburn Jr." followed by a period. The signature is fluid and cursive.

Max O. Cogburn Jr.
United States District Judge